17th Contracting Squadron

Integrity - Service - Excellence

Termination of Commercial Contracts

U.S. AIR FORCE

Objectives

- **The individual should be able to;**
- **Research FAR, DFAR, AFFAR, and AETC FAR reference materials**
- **Discuss basic facts and terms concerning commercial terminations**
- **Identify two types of commercial terminations and evaluate conditions of use.**
- **Complete the tasks necessary for the issuance of cure notices**
- **Identify why and when documentation must be accomplished**

Basic Facts and Terms

- **The Government is permitted to terminate a commercial contract for two reasons –**

  1. **Termination for the Government's convenience, or;**
  2. **Termination for cause**

- **FAR Part 12 termination concepts differ from FAR Part 49**

  - **Contracting Officers *shall* follow the procedures in FAR Part 12 when terminating a commercial contract.**

  - **The requirements of Part 49 do not apply when terminating contracts for commercial items; however, Contracting Officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with FAR Part 12 and the language of the termination paragraphs in FAR 52.212-4**

Basic Facts and Terms

- **For acquisitions containing FAR 52.212-4, Contract Terms and Conditions - Commercial Items, and awarded using simplified procedures in accordance with FAR Part 13, Contracting Officers are authorized to terminate for convenience of the Government or for cause.**

- **For commercial item acquisitions awarded using FAR Parts 12, 14, or 15 procedures, Contracting Officers must follow the procedures set forth in AETC FAR Part 49 to terminate for cause.**
  - Authority to terminate contracts for default requires appointment by HQ AETC/LGC
  - When requesting authority, Contracting Officers will provide all relevant documents to include a chronology of events, cure/show cause notices, and contractor responses.

Termination for Convenience

- **When can the Government terminate a commercial contract for convenience?**
  - **When the Government's requirements are reduced or eliminated**
  - **To correct an improper Termination for Cause**
- **If a contractor is terminated for convenience, then the contractor shall be paid;**
  - **The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and**
  - **Any charges the contractor can demonstrate directly resulted from the termination.**
  - **Both parties should mutually agree upon the requirements of the termination proposal**
  - **Both parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement**

Termination for Cause

- **Excusable delays**
  - **Contractors must notify the CO as soon as possible after commencement of any excusable delay**
  - **In most situations, this requirement should eliminate the need for a show cause prior to terminating a contract**
  - **The CO shall send a cure notice prior to terminating a contract for a reason other than late delivery**

- **When can the Government terminate a commercial contract for cause?**
  - **In the event of any default by the contractor**
  - **When the contractor fails to comply with any contract terms and conditions**
  - **When the contractor fails to provide the Government, upon request, with adequate assurance of future performance**

- **The Government's rights after a termination for cause shall include all the remedies available to any buyer in the**

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The Cure Notice

- **The "Cure Notice" may be in the following format: see FAR 49.607**

- **You are notified that the Government considers your ____ [*specify the contractor's failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for cause under the terms and conditions of the _____ [*insert clause title*] clause of this contract.**

Documentation

- **Keep all documentation pertaining to the termination**
  - **E-mail correspondence**
  - **Meeting minutes**
  - **Letters from the using activity**
  - **Letters from the contractor**
  - **Other various correspondence**

- **Ensure documentation is clear and concise – file documentations might need to be provided in support of the termination, as a result of any higher level review or in the worst case, litigation.**

Questions?